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UNITED STATES DEPARTMENT OF AGRICULTURE

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BEFORE THE SECRETARY OF AGRICULTURE

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In re:) P. & S. Docket No. D-06-0016
GFI America, Inc., d/b/a Nicollet)
Cattle Trading, Gary Goldberger,)
and Nicollet Cattle Company, Inc.,)
Respondents)

DECISION AND ORDER AS TO RESPONDENT GARY GOLDBERGER

This proceeding was instituted under the Packers and Stockyards Act (7 U.S.C. § 181 et seq.), hereinafter "the Act", by a Complaint and Notice to Show Cause filed by the Administrator, Grain Inspection, Packers and Stockyards Administration (GIPSA), United States Department of Agriculture, alleging that the Respondents GFI America, Inc., d/b/a Nicollet Cattle Trading, and Gary Goldberger, wilfully violated the Act; and giving Respondent Nicollet Cattle Company, Inc., an opportunity to show cause why its application for registration should not be denied. This decision is entered as to Respondent Gary Goldberger pursuant to the consent decision provisions of the Rules of Practice applicable to this proceeding (7 C.F.R. § 1.138).

Respondent Gary Goldberger admits the jurisdictional allegations of paragraph I of the complaint set forth below and specifically admits that the Secretary has jurisdiction in this matter, neither admits nor denies the remaining allegations, waives oral hearing and further procedure, and consents and agrees, for the purpose of settling this proceeding and for such purpose only, to the entry of this decision.

Complainant agrees to the entry of this decision.

Findings of Fact

1. Respondent GFI America, Inc., d/b/a Nicollet Cattle Trading, is a Minnesota corporation whose official address and registered office is 2815 Blaisdell Avenue South, Minneapolis, MN 55408, and whose business operations are now being conducted during a Chapter 7 bankruptcy proceeding by a Trustee, Phillip L. Kunkel, whose mailing address is Phillip L. Kunkel, Esq., Gray, Plant, Mooty & Bennett, P.A., 1010 West St. Germain, Suite 600, St. Cloud, MN 56301.

2. Respondent GFI America, Inc., d/b/a Nicollet Cattle Trading, at all times material herein was:

(a) Engaged in the business of a dealer, buying and selling livestock in commerce for its own account; and

(b) Registered with the Secretary of Agriculture as a dealer to buy and sell livestock in commerce, and as a market agency buying on commission.

3. Respondent Gary Goldberger is an individual whose address is 3712 Blackhawk Lake Ct., Eagan, MN 55122.

4. Respondent Gary Goldberger at all times material herein was:

(a) A vice president, director, and shareholder of GFI America, Inc.;

(b) The person managing, directing, and controlling the dealer and market agency buying on commission operations that GFI America, Inc., has conducted under the trade name Nicollet Cattle Trading since its registration under the Act on March 3, 2003;

(c) Engaged in the business of a dealer, buying and selling livestock in commerce for the accounts of GFI America, Inc., d/b/a Nicollet Cattle Trading, and for the

account of others as an employee of GFI America, Inc., d/b/a Nicollet Cattle Trading; and

(d) Not individually registered with the Secretary of Agriculture as a dealer to buy and sell livestock in commerce, or as a market agency buying on commission.

Conclusions

Respondent Gary Goldberger having admitted the jurisdictional facts and the parties having agreed to the entry of this decision, such decision will be entered.

Order

Respondent Gary Goldberger, his agents and employees, directly or through any corporate or other device, including Nicollet Cattle Company, Inc., in connection with his operations subject to the Packers and Stockyards Act, shall cease and desist from:

1. Failing to pay the full purchase price of livestock; and
2. Issuing checks in purported payment of livestock purchases without having sufficient funds on deposit and available in the account upon which such checks are drawn to pay such checks when presented.

Respondent Gary Goldberger shall not be registered to engage in business as a dealer or market agency for two and a half years, and pursuant to § 303 of the Act (7 U.S.C. § 203) is prohibited from operating as a dealer or market agency without being registered.

Respondent Gary Goldberger is assessed a civil penalty held in abeyance of \$15,000 which shall terminate two and a half years from the date of issuance of this decision, provided Respondent Goldberger complies with the employment restrictions set forth in the Understanding With Respect to Civil Penalty in this proceeding.

The civil penalty will terminate after two and a half years unless Complainant files a

motion for payment of the civil penalty with an affidavit from the head of Policy and Litigation Division of GIPSA attesting to Respondent's violation of the Understanding. If such motion with accompanying affidavit is filed, the Administrative Law Judge shall enter the order requiring payment of the \$15,000.00 civil penalty without further procedure.


The provisions of this Order shall become effective on the sixth day after service on Respondent Gary Goldberger.

Copies of this decision shall be served upon the parties.


GARY GOLDBERGER
Respondent

Lockridge Grindal Nauen P.L.L.P.
Attorneys for Respondent Gary Goldberger

by 
CHARLES N. NAUEN


ERIC PAUL
Attorney for Complainant

Issued this 19th day of June, 2007


Administrative Law Judge